IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4004 OF 2004

Gokul Bhagaji Patil,
Occ.Service, R/o.7, Ganesh Darshan
Co-op. Hsg. Soc; MIDC Road,
Chaitanya Sankul-A, Badlapur,
Shirgaon, District. Thane. Petitioner

versus

1. The State of Maharashtra.

2. Central Bureau of Investigation,
EOU-VII, New Delhi. Respondents

Shri A.P.Mundargi with R.S.Kate, Adv. for petitioner.

Shri Raja Thakare with A.M.Chivalkar, Adv. for CBI.

Shri K.V.Saste, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT :- 12.12.2005

DATE OF PRONOUNCING THE JUDGEMENT :- 01.02.2006

JUDGEMENT :

1. This application for bail is by the original accused no.56 in C.R.No.135 of 2002 registered at Bund Garden Police Station, Pune. The applicant

had applied for bail but the learned Special Judge, MCOC, Pune exercising powers under Maharashtra Control of Organised Crime Act, 1999 (for the sake of brevity hereinafter referred to as "MCOC Act") had rejected the application vide order dated 26th April 2004.

2. The applicant was at the relevant time Senior Police Inspector at Meera Road Police Station, Thane District. According to him he was posted there from 2nd June 1999 to 13th May 2000. According to the applicant his service record is clean and unblemished. He submits that he was the only Police Inspector at Meera Road Police Station and there were about four Police Sub Inspectors attached to the same.

3. The prosecution case, briefly stated, is that on or about 15th August 1999 one Dhirajlal Patel has some information about fake revenue and postal stamps being printed by a gang. He passed on this information to one Vazir Sheikh. Shri Vazir Sheikh was attached to D.S.B., Thane Rural. He confirmed this information and thereafter contacted the Meera Road Police Station. The applicant was in-charge at the relevant time at Meera Road Police Station. The applicant made

available staff and thereafter the said staff accompanied Vazir Sheikh, the informant and others. A trap was laid near Zunka Bhakar Kendra at Meera Road Railway Station. One Phulchand Jain was arrested along with bogus stamps. On further inquiry, the accused Jain led the police team to Zaveri Bazar, Mumbai where one more accused Umesh Khandelwal came to be arrested. Another person Bhausaheb Jagdale came to be arrested from General Post Office, at Victoria Terminus (now Chhatrapati Shivaji Terminus), Mumbai. Thereafter a case was registered at Meera Road Police Station vide C.R. No.274 of 1999 alleging offences punishable under sections 257, 260, 420, 467, 468 read with 34 of IPC and under section 55 of the Indian Postal Act, 1898 against all of them. It is stated in the present application that the C.R. was registered at the instance of Police Sub Inspector Kakde, who was Investigating Officer in this case. During the investigation, various other persons came to be arrested. During the raids bogus stamps worth Rs.83,78,300/- were seized.

4. It is alleged that the present applicant, who was otherwise busy in investigation of more serious offences during this period, issued

certain instructions to the Investigating Officer in connection with C.R. No.274 of 1999. After the investigations were complete, charge sheet came to be filed on 30th September 1999.

5. It is contended that in the year 2002 a C.R. came to be registered at Bund Garden Police Station, Pune alleging commission of identical offences. The said crime was initially investigated by the officers of Bund Garden Police Station, Pune. However, a Special Investigation Team (SIT) was constituted by the State of Maharashtra (respondent no.1) for investigation into this crime. During the course of investigations, provisions of MCOC Act were invoked and applied. The applicant, who was then promoted as Assistant Commissioner of Police, came to be arrested on 18th October 2003 by this SIT.. The arrest was in connection with C.R.No.135 of 2002 registered at Bund Garden Police Station. It is necessary to refer to the gist of the allegations which form basis of the investigation and the arrest.

6. It is alleged that on the orders of Director General of Police, Shri Sharad Shelar - Additional Superintendent of Police, Thane

(Rural) conducted an inquiry into, the manner in which C.R.No.274 of 1999, registered at Meera Road Police Station, was investigated. The result of this inquiry, according to prosecution, corroborates the contents of confessional statement of one Uday Ramkrishna Savant. This Uday Savant (accused no.12) is an accused in the Bund Garden Police Station C.R.. On these materials, a recommendation was made for strict legal action against applicant and PSI Pratap Kakde, both at the relevant time being officers at Meera Road Police Station.

7. The allegations are that investigations in Meera Road Police Station case reveal that organised crime syndicate of Abdul Karim Ladsab Telgi (hereinafter referred to as "AKL Telgi" for short) (accused no.23) had been aided and abetted by the accused namely the applicant and PSI Kakde. The allegations are that these officers abstained from taking lawful measures in this case for pecuniary gains. It is also alleged that investigations reveal that a printing press situate at Mulund, Mumbai and Bora Bazar, Fort, Mumbai are the printing press concerned. From the premises of these printing press, the counterfeit stamps and stamp papers were being

printed. Both, applicant as well as PSI Kakde, neither searched the premises nor seized the machines thereby allowing the organized crime syndicate to continue the above unlawful activities therefrom. In other words, if timely legal action and measures had been initiated, these premises as well as machines would not have been put to use by the organized crime syndicate for printing counterfeit stamps and stamp papers.

8. It is alleged that both, the applicant and said PSI Kakde, conspired with AKL Telgi and ensured that he was not arrested in this offence and remain at larged till November 2001, when he was arrested by Karnataka Police. Even the counterfeit stamps seized in this case were not sent for examination to the Indian Security Press by accused PSI Kakde. Thus, these accused knowingly and intentionally aided and abetted the activities of the organized crime syndicate till the detection of the instant case on 7th June 2002. Thus, the organized crime syndicate carried on it’s unlawful activities for almost three years.

9. It is alleged that the applicant as well as PSI Kakde being public servants, rendered help

and support in the commission of organised crime syndicate as defined in clause (iii) of Section 2 of MCOC Act. Their help and support in continuing unlawful activities of the organized crime syndicate and by deliberately avoiding to take lawful measures under MCOC Act, means these acts are punishable as an offence under section 3(ii) and Section 24 of the MCOC Act.

10. In the above facts and circumstances, the arrest of the applicant was effected in the aforesaid C.R. registered at Bund Garden Police Station, Pune. The applicant being arrayed as accused and detained in custody in this case, as noted above, applied unsuccessfully for bail before the Trial Court. The present bail application is invoking Sections 437/439 of Code of Criminal Procedure read with Section 21(4) of MCOC Act.

11. Shri Mundargi - learned Senior Counsel appearing for the applicant submits that PSI Kakde (accused no.57) was arrested but unfortunately died in custody. The case as far as he is concerned has abated. The applicant is accused no.56 in C.R.No.135/2002. He was at the relevant time (2nd June 1999 to 30th March 2002)

in-charge of Meera Road Police Station. He submits that the main allegations are those set out in paragraph 7 of this bail application. He invites my attention to the fact that all persons who have given statements remained silent for about six years and there is no reason why it took them such a long time to come forward and depose in the matter. That apart, he submits that if statements are given by the persons concerned after such a long period, then it is difficult to believe that re-collection of the events is exact and authentic. In other words, there is a serious doubt about the genuineness and truthfulness of these statements. In that behalf, he invites my attention to the statement of one Narendra Kashinath Kore who is Police Constable and was attached to Meera Road Police Station during the relevant time. He has deposed about how he recorded the complaint. The recording was done in the presence of PSI Kakde and as per his directions. However, this witness deposes that Vazir Sheikh was also inferjecting while the complaint was being recorded. In the same manner, this witness purportedly recollects the events of 24th August 1999. He submits that the statement is recorded on 29th October 2003. It is inconceivable that this witness remembers

all details of the seizure, recoveries and arrests made in August 1999.

12. Shri Mundargi invites my attention to Section 3(ii) and Section 24 of MCOC Act and submits that in the instant case the alleged role of the applicant is after accessories are supplied. In other words, he could not be held guilty of aiding and abeting the organized crime syndicate. The events as disclosed from the prosecution case are over and have already occured. The stamps were already in circulation. Some of them were found to be counterfeit and bogus. It is not as if the applicant by not taking timely action has assisted the syndicate and it’s activities continued with the alleged help of the applicant. Therefore, according to Shri Mundargi, once the unlawful activities and illegal acts were in a complete state, then all that can be alleged is lapses during the course of investigation. Apart from a departmental action, all that can be done as far as applicant is concerned, is to bring home a case of his being a public servant, and therefore, liable for punishment under section 24. According to Shri Mundargi, assuming without admitting that, the applicant has committed some acts of omission and

commission, the case would fall under section 24 and not under section 3(ii) of the MCOC Act. Shri Mundargi relies upon the judgement of Supreme Court reported in (1995)5-SCC-591 (Giani Pratap Singh Vs. State of Rajasthan and another) and contends that the offence u/s 24 being punishable with imprisonment for three years and the accused having spent more than two years already in custody, he can be directed to be released on bail by imposing terms and conditions, on par with those laid down by the Hon'ble Supreme Court in this judgement. The second decision relied upon by Shri Mundargi is pertaining to the rights of accused like applicant being balanced with that of public interest and the same is reported in (1994)6-SCC-731. He submits that the Supreme Court while balancing rights of the accused, has issued certain directions and those should be noticed in the instant case as well.

13. Shri Mundargi thereafter relies upon the decision of Supreme Court in the case of Ranjitsingh Brahmajitsingh Sharma Vs. State of Maharashtra (2005-ALL.MR-{CR}-1538 {SC}) and more particularly the portions where the Hon'ble Supreme Court has discussed the ambit and scope

of Sections 3(ii) and 24 of the MCOC Act. Shri Mundargi has invited my attention to some portions of the report submitted by S.R.Shelar, Additional Superintendent of Police, Thane (Rural). He also invites my attention to some of the statements which have been recorded in this case and more particularly that of Ravindra Sengaonkar and Pandharinath N. Ghuge. He submits that the version that there was a complaint made right up to the Lok Aayukta with regard to the investigations carried out in the fake stamp case by the applicant, is not only not supported and corroborated but in fact a grave doubt is cast upon the stand of the prosecution. For all these reasons he submits that the application be allowed.

14. Shri Mundargi has invited my attention to the fact that not much capital can be made of the allegation that applicant has not arrested AKL Telgi. In other words, that applicant and said Telgi were seen together at Meera Road Police Station on 15th September 1999 is an allegation which cannot be made in the light of the fact that said Telgi, on that date, was already detained pursuant to judicial orders. Those orders are passed by competent Court outside the

State of Maharashtra upon production of said Telgi as an accused before it. Shri Thakre - Special Public Prosecutor appearing for prosecution concedes that this allegation may not be considered as being pressed at this stage in the light of production of copies of order passed by the competent Court.

15. However, Shri Thakre submits that there are sufficient materials other than these allegations and those are serious enough for rejecting present application. He submits that it is false to suggest that activities of syndicate had come to an end or were not continuing. On the other hand, despite registration of C.R.No.274 of 1999 the activities of the syndicate had not come to an end. Shri Thakre tenders a compilation of documents and invites my attention in this behalf to an endorsement made in the case diary on 28th September 1999. It is recorded in this case diary that when the police officials searched the premises (residential premises) of the absconding accused AKL Telgi as also his press (printing press), it was noticed that same was functional. Upon inquiries, it was revealed that although Telgi was not attending the press, his wife and servants are carrying on the activities therein.

He then relies upon the statement of Uday Ramkrishna Sawant where he states that although he was detained for three months and twenty days, the affairs at the printing press were managed by Dashrath Ramkrishna Sawant. It was also managed by one Hemant Bhogle and along with Dashrath Sawant the work of printing of revenue and insurance stamps was going on continuously. He also relies upon statement of Suvarna Durve who is Manager of the press.

16. Thereafter, he relies upon portions of the statement where she has categorically pointed out that Dashrath was looking after the work of Uday Sawant when the said Uday Sawant had stopped attending the press. She has also deposed about how the work was being carried out and her being questioned by said Telgi. He submits that number of witnesses have pointed out that activity of counterfeit stamps was going on uninterrupted. By non seizure and non sealing of the machineries and the premises by the Police Officials, the organised crime syndicate was permitted to continue the activities. He submits that there is a press note issued by the Police Department which is under the signature of the applicant. It bears the official seal of Superintendent of

Police, Thane (Rural). This press note speaks about seizure of fake insurance, postal and revenue stamps being printed by press of Telgi at Bora Bazar and at the press of Yuvraj Parmar at Mulund. He submits that the press note purports to high light the role of the applicant, said Kakde and other officials of Meera Road Police Station in apprehending one Phulchand Jain and through him the report further shows that there are other persons involved in the racket. It also speaks of the role of said Telgi in printing and circulating of these fake stamps. He submits that from a reading of this press note it is apparent that the applicant is aware of existence of a gang which is involved in counterfeit stamps and stamp papers. The applicant is aware of the magnitude and seriousness of the crime.

17. Shri Thakre then invited my attention to the statement of Dashrath Sawant, who deposes that the deceased Kakde had talks with Telgi. Shri Thakre submits that Kakde was working along with applicant. Both had knowledge of activities of Telgi. There is enough material on record, according to Shri Thakre, which would indicate that the applicant had knowledge of Telgi’s activities. However, no action was taken by the

applicant against him. The decision to keep the main accused away from the investigation and arrest was by the applicant and that is how he issued directions to Kakde and others.

18. The submission of Shri Thakre is that the entire version of Vazir Sheikh as recorded in the statement, cannot be discarded. He submits that it is pertinent to note that Vazir Sheikh is not shown as a witness by the applicant in C.R.No.274 of 1999. He submits that in this view of the matter, there were complaints about the manner in which the investigations have been carried out. In that behalf, he invites my attention to a D.O.Letter dated 22nd September 1999 which is addressed by Vazir Sheikh. He submits that there is a complaint in this letter that the prime accused Telgi was not arrested. He also invites my attention to a letter dated 3rd February 2000 addressed by Vazir Sheikh pointing out differences and disputes between the Police Officials including the applicant and one Sengaonkar.

19. He submits that there is contemporaneous record and what is stated by Vazir Sheikh gets independent corroboration from the statement of

Liyakat Nabi Nadaf who was posted as Police Inspector (DSB), Thane Rural. Therefore, the theory of fabrication of records and deliberate inaction to assist and abet the organized crime syndicate, is, thus, prima facie supported by the materials produced. He submits that this is a case where activities of Telgi were going on from 1995. They continued after promulgation of MCOC Act. It is a case of continuing unlawful activity. He submits that the judgement in Ranjitsingh Sharma's case has been considered by this Court while deciding bail applications of police officials namely Mohamad Chand Mulani and similar arguments were also considered in the case of one A.K.S.Yadav. He invites my attention to the orders passed by Brother Justice Oak. In bail applications of these two applicants according to Shri Thakre, the judgement of Hon'ble Supreme Court had been referred to and distinguished.

20. Shri Thakre submits that here the applicant is an accessory before the offence. He is not an accused in C.R.No.274 of 1999 because he is abeting the activities of those involved in this C.R.. The charge of abetment is in Bund Garden Police Station, Pune which is of 2002. In any

event, it is a criminal conspiracy to commit offence relating to counterfeit stamps. For all these reasons, the judgement of Hon'ble Supreme Court in Ranjitsingh Sharma's case cannot be of any assistance. He, therefore, prays that the bail application be dismissed.

21. With the assistance of Shri Mundargi as also Shri Thakre I have perused the relevant paragraphs of the charge sheet, the statements relied upon and other materials. I have also perused the judgements of this Court as well as Supreme Court brought to my notice. I have also perused the provisions of MCOC Act. In my view, applying the mandate of Section 21(4) of MCOC Act to the facts and circumstances of present case, it is clear that the applicant is, prima facie, guilty of offences under MCOC Act and, therefore, he cannot be enlarged on bail.

22. I need not repeat each and every aspect highlighted by the prosecution. Suffice it to state that there is substance in the contentions of Shri Thakre that the prosecution case does not suffer a set back only because it is unable to prima facie demonstrate that the applicant did not arrest the prime accused Telgi on 15th

September 1999. A concession by Shri Thakre on this aspect would not carry or advance the case of the applicant any further.

23. On the other hand, from the perusal of the charge sheet and the materials produced, it is clear that the applicant was fully aware about the activities of printing of postal and revenue stamps at the printing press owned by prime accused Telgi at Bora Bazar, Mumbai. He, therefore, registered C.R.No.274/199 on 22nd August 1999 as Police Inspector, Meera Road Police Station, District Thane. Charge sheet had been forwarded to the Court by the applicant on 30th November 1999 in which Telgi was shown as a wanted accused. The applicant was also aware that only seven witnesses including Investigating Officer and four Panchas were cited as witnesses. The seized property was not sealed. No opinion regarding counterfeit nature of the seized stamps was obtained from Indian Security Press, Nashik. Only six witnesses including four Panchas of seizure were examined. There are statements recorded in the subject C.R.. It is clear that when the police party was led to the press and it was searched, permission was sought to proceed in the matter. However, it is the applicant who

recalled the police party without effecting the seizure. This led to differences and disputes between the deceased Kakde and Vazir Sheikh. The person who was arrested in C.R.No.274 of 1999 told the police officers that the press belongs to Telgi and he was printing stamps. It was not as if anybody has prevented or restricted the police party's entry into the premises. However, the police party was called back. The investigations were carried out by deceased Kakde as per the directions of the applicant. No efforts were made to seize or seal the press and machinery of Telgi. The police party not being allowed to proceed is a fact reported to higher ups by one of the police officials. A dispute is raised by Shri Mundargi as to whether the complaint was at all addressed or that some other police officials on account of enmity have forged this complaint. In my view, whether the complaint/D.O.Letter was at all addressed or received is something which cannot be decided at this stage. These are documents which have been forming part of the entire material. With regard to their contents and whether the said documents could be exhibited at trial, is a matter which could be decided at the trial. However, independent of that, there is prima facie

material because others statements do corroborate and support this version. It is a case where the police officials including the applicant, were aware of the serious lapses and made no attempt to correct them. In fact, people at large were being misled by issuing press notes. It was shown as if the applicant and the police team are really interested in bringing all culprits including the prime accused Telgi to book. However, the prime accused was sheilded and kept away. This is the version of superior police officials who were appointed to look into the activities during the course of investigation. In this behalf, the statements of API Vhaval, Sharad Shelar and Dhirajlal Patel are relevant. It is thus clear that the prime accused was able to continue his illegal activities and more particularly printing of counterfeit government stamps and stamp papers from the press between 29th August 1999 and June 2002. He continued to purchase raw materials during this period from various persons. Thus, from the statements "Aavirat Chalu Aahe" (Running Continuously), is the version not only of the police officials but the employees of the press. By merely arresting some associates of the prime accused here or there and not arresting the prime accused, the

applicant who is in-charge of the Police Station concerned, allowed the organized crime syndicate to continue it's activities. There is a confessional statement which is speaking of the extent of sale of counterfeit stamps in a organized manner. It was being carried on in about 6 or 7 cities through out the country. Even after arrest of Telgi by Bangalore Police, the activities continued, is the statement of Uday Sawant. Thus, this is a case where the applicant has facilitated all through out the activies of organized crime syndicate and it is not as if he came at the scene when the activities were either arrested or complete.

24. Thus, the statements made on affidavit by U.K.Goswami, DSP, CBI, prima facie, appear to be well founded. The background is set out in paragraphs 1 and 2 and there is substance in the contentions that what the Police discovered in the year 2002, could have been done by the applicant in the year 1999 itself. The entire chain of events have been naratted by me above. It is not necessary to emphasise the role of a Senior P.I. and expectations from him as such. Once the applicant is in-charge of the Police Station, there is no way he can avoid the

responsibility. This is a case serious enough warranting his supervision and control from time to time. At this prima facie stage it cannot be said that the applicant is framed on the basis of statements which have been recorded after enormous delay. The persons who have deposed, were also interrogated and met the Investigating Officer (Sharad Shelar) and gave their version to him. Similarly, the contention that one police official has been used to rope in and involve another, is also not well founded at this stage because Vazir Sheikh's version gets support from other materials. Thus, the unlawful activities could have been stopped by the applicant as he had enough powers. He had to use them conscienously and in public interest and not allowed the organized crime syndicate to continue their activities unhampered and unobstructed. The activities flourished because of the role played by Senior Police Officials like the applicant.

25. There is substance in the contentions of the prosecution that prime accused Telgi was never arrested and no serious attempts were made in this behalf. No application seeking his police custody was ever filed or proceedings for forcing

his attendence were initiated. By not seizing the printing press machinery and not sealing press itself, the applicant has facilitated the continuation of the activities therefrom.

26. What remains is then the decisions which have been brought to my notice. As far as decisions laying down guidelines for grant of bail of under-trials, in my view, those judgements cannot have any application while deciding bail applications under MCOC Act. None dispute that the same has to be decided on the touchstone of the provisions of MCOC Act.

27. As far as decision in Ranjitsingh Sharma's case is concerned, there is enough indication in the judgement itself that bail applications cannot be granted merely relying upon the interpretation of the provisions of MCOC Act. The decision itself states that one has to see facts and circumstances in each case. In the case of C.B.A.Yadav Vs/ State of Maharashtra and another (Criminal Application No.4853 of 2004) Brother Justice Oka has referred to the decision in Ranjitsingh Sharma's case and in paragraphs 46, 47 and 48 of his judgement, the learned Judge observes that the material regarding knowledge of

the applicant-accused about continuing organised crime of printing and selling of fake stamps and stamp papers and rendering protection thereto has some significance. That is clear from a reading of these paragraphs in the said judgement.

28. In the case of Mohamad Chand Mulani Vs. Union of India (Criminal Application No.3885 of 2004), similar observations have been made by the same Judge. If activities of the organised crime syndicate continue even after registration of crime and there is material on record about such continuation, then ingredients of Section 3 of MCOC Act are prima facie fulfilled. In that case the learned Judge noticed that storage of fake stamps was done regularly in a godown. This continued even after registration of crime at Bund Garden Police Station.

29. In the present case a much more serious aspect namely printing of the fake stamps was continuing. That there was enough opportunity to seize the machinery and seal the premises is evident. Therefore, it is not possible to accept contention of Shri Mundargi that Section 3(2) of MCOC Act is not attracted and at the most only section 24 thereof could be invoked by the

prosecution.

30. Considering the principles laid down in Ranjitsingh Sharma’s case as well as statutory provisions, in my view, it is not possible to hold that the applicant is not guilty of any offences punishable under MCOC Act. Consequently, the application must fail. It is accordingly dismissed.

(S.C.DHARMADHIKARI, J.)